

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALPHONSE L. REDDICKS,

Plaintiff,

v.

PACIFIC MARITIME ASSOCIATION, and  
LOCAL 23 LONGSHOREMAN'S UNION,

Defendants.

Case No. C04-5714RJB

ORDER DENYING  
DEFENDANT PACIFIC  
MARITIME  
ASSOCIATION'S  
MOTION TO DISMISS

This matter comes before the court on Defendant Pacific Maritime Association's Motion to Dismiss. Dkt. 10. The court has considered the relevant documents and the remainder of the file herein.

PROCEDURAL HISTORY AND MOTION

Plaintiff filed this civil action on October 22, 2004. Dkt. 1. After his motion to proceed *in forma pauperis* was denied, plaintiff paid the filing fee on November 2, 2004. Dkt. 4. On November 18, 2004, the court issued a minute order requiring the parties to file a joint status report by March 16, 2005. Dkt. 7. In that minute order, the court informed plaintiff that he was responsible for starting the communications needed to comply with the minute order. *Id.*

On December 16, 2004, Clemens H. Barnes filed a Notice of Appearance on behalf of Pacific Maritime Association (PMA). Dkt. 8. On March 11, 2005, PMA filed a motion to dismiss this case. Dkt. 10. On March 23, 2005, a certificate of service was filed, showing that PMA was served with a copy of the summons and complaint on March 18, 2005. Dkt. 12. A joint status report has not been filed.

1 PMA contends that this case should be dismissed because plaintiff has not served defendants within  
2 the time provided for in the Federal Civil Rules of Procedure, or in the alternative, that the court should set  
3 a deadline for plaintiff to properly serve defendants. Mr. Barnes stated that, after he had filed the Notice of  
4 Appearance, plaintiff contacted him and sent him copies of the court's minute order requiring initial  
5 disclosures and a joint status report. Dkt. 11, at 1. Mr. Barnes stated that, because neither PMA nor the  
6 co-defendant Local 23 of the ILWU had been served with a copy of the summons and complaint, he  
7 informed plaintiff that he needed to serve defendants. Dkt. 11, at 2.

#### 8 DISCUSSION

9 Fed.R.Civ.P. 4 provides in relevant part as follows:

10 **(m) Time Limit for Service.** If service of the summons and complaint is not made upon a  
11 defendant within 120 days after the filing of the complaint, the court, upon motion or on its  
12 own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to  
13 that defendant or direct that service be effected within a specified time; provided that if the  
14 plaintiff shows good cause for the failure, the court shall extend the time for service for an  
15 appropriate period. This subdivision does not apply to service in a foreign country pursuant  
16 to subdivision (f) or (j)(1).

17 After PMA filed the motion to dismiss, PMA was served with a copy of the summons and  
18 complaint. Because PMA has now been served with a copy of the summons and complaint, the case  
19 against that defendant may proceed.

20 The court notes that proof of service on defendant Local 23 Longshoreman's Union has not been  
21 filed. More than 120 days have elapsed since plaintiff paid the filing fee in this case. Under Fed.R.Civ.P.  
22 4(m), the court may dismiss the action without prejudice or direct that service be effected within a  
23 specified time. Rather than dismiss the case against Local 23 Longshoreman's Union at this time, the court  
24 should, in the interest of fairness, permit plaintiff additional time to properly serve this defendant and to file  
25 proof of service with the court.

26 The dates set forth in the court's November 18, 2004 minute order (Dkt. 7) should be stricken.

27 Plaintiff is proceeding *pro se* in this matter, that is, he is proceeding on his own behalf without  
28 counsel. Plaintiff is informed that it is his responsibility to comply with requirements of the Federal Rules  
of Civil Procedure and of the Local Rules for the United States District Court for the Western District of  
Washington. Failure to comply in the future with the applicable rules of procedure could result in adverse  
rulings by the court, and could even result in dismissal of the case.

1 Therefore, it is hereby

2 **ORDERED** that Defendant Pacific Maritime Association's Motion to Dismiss (Dkt. 10) is  
3 **DENIED**. Not later than May 13, 2005, plaintiff is **ORDERED** to serve the summons and complaint on  
4 defendant Local 23 Longshoreman's Union, in compliance with Rule 4 of the Federal Rules of Civil  
5 Procedure, and to file with the court proof of service in compliance with Fed.R.Civ.P. 4(l). If plaintiff fails  
6 to file proof of service as directed herein, the court will dismiss Local 23 Longshoreman's Union as a  
7 defendant in this case. The deadlines set forth in the court's November 18, 2004 minute order (Dkt. 7) are  
8 **STRICKEN**. The following deadlines are hereby set:

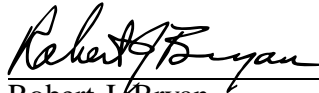
9 Deadline for FRCP 26(f) Conference: **JUNE 10, 2005**

10 Initial Disclosures Pursuant to FRCP 26(a)(1): **JUNE 17, 2005**

11 Combined Joint Status Report and Discovery **JUNE 24, 2005**  
12 Plan as Required by FRCP 26(f) and Local  
Rule CR 16:

13 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
14 party appearing *pro se* at said party's last known address.

15 DATED this 8<sup>th</sup> day of April, 2005.

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18 Robert J. Bryan  
United States District Judge  
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